

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2862 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

MAHESH VRUJLAL CHUDGAR

Versus

STATE OF GUJARAT

Appearance:

Shri A.J. Patel, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 20/09/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (respondent No. 2 herein) on 9th September 1987 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban land Tribunal at Ahmedabad (respondent No.3 herein) on 25th March 1996 in

Appeal No. Ahmedabad-94 of 1995 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 509.64.34 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act. Its copy is at Annexure A to this petition. It was duly processed by respondent No.2. After observing necessary formalities under sec. 8 of the Act, by his order passed on 9th September 1987 under sub-section (4) thereof, respondent No.2 came to the conclusion that the holding of the petitioner was in excess of the ceiling limit by 509.64.34 square meters. Its copy is at Annexure B to this petition. It appears that pursuant thereto the notification under sec. 10(1) of the Act came to be issued soon thereafter. Its copy is at Annexure C to this petition. It was followed by the notification under sec. 10(3) of the Act issued on 23rd February 1994 and published in the Government Gazette on 17th November 1994. It was followed by the notice under sec. 10(5) of the Act issued on 26th September 1995. Its copy is at Annexure D to this petition. At that stage the petitioner carried the matter in appeal before respondent No.3 under sec. 33 of the Act. A copy of the memo of appeal is at Annexure E to this petition. It came to be registered as Appeal No. Ahmedabad-94 of 1995. By the order passed on 25th March 1996 in the aforesaid appeal, respondent No.3 dismissed it. Its copy is at Annexure J to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure J to this petition.

3. As rightly submitted by learned Advocate Shri Patel for the petitioner, the constructed properties have to be excluded from the holding of the petitioner in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in 1992 SC 1567. It appears from the impugned order at Annexure B to this petition that the petitioner's holding included two dwelling units in the form of Flat No. 32 in Aditi Flats Block No.1 and Flat No. 86 in Gaganvihar Co-operative Housing Society Block No. B admeasuring 87.78 square meters and 86.55 square meters respectively. The area of the aforesaid two flats (residential units) was included in the petitioner's

holding. It was not the case of respondent No.2 that the residential units were not in existence prior to coming into force of the Act. Again it was not his case that the constructions thereof were unauthorised. In that view of the matter, the area of the aforesaid two flats ought to have been excluded from the holding of the petitioner in view of the aforesaid binding ruling of the Supreme Court. The contrary view taken by the authorities below cannot be sustained in law.

4. It is the case of the petitioner that a parcel of land bearing Plot No.2 in Arpan Nagar Co-operative Housing Society admeasuring 674.65.69 square meters situated at Sola was sold some time on or about 7th November 1975. The sale transaction obviously took place between 27th February 1975 and 28th January 1976. The petitioner was required to prove his bona fide in view of sec. 4(4) of the Act. Respondent No.2 did not find the transaction to be bona fide only on the ground that the petitioner did not remain present pursuant to the draft statement and the notice issued to him under the relevant provisions contained in S. 8 of the Act. It is the case of the petitioner that he did not receive the draft statement and the notice on account of the change of his address. It appears that the petitioner is a medical practitioner, and as such is an educated person. He ought to have intimated to respondent No.2 the change of his address as he knew that he had filed his declaration in the prescribed form under sec. 6(1) of the Act. However, this lapse on his part should not come in his way in proving his bona fide with respect to the aforesaid sale transaction before respondent No.2 as ample material has come on record of this petition in that regard. Since such material has to be considered by respondent No. 2, it is desirable to remand the matter to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law. The impugned order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure G to this petition will have therefore to be quashed and set aside.

5. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 9th September 1987 at Annexure B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 25th March 1996 in Appeal No. Ahmedabad-94 of 1995 at Annexure J to this petition together with notifications issued pursuant thereto is quashed and set aside. The matter is remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision

according to law in the light of this judgment of mine.
Rule is accordingly made absolute to the aforesaid extent
with no order as to costs.
